

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

PATRICIA HOOPER and JOSEPHINE)
VAUGHAN,)
)
Plaintiffs,)
) Civil Action No.08-4045-c-NKL
v.)
)
ADVANCE AMERICA, CASH)
ADVANCE CENTERS OF MISSOURI, INC.,)
)
Defendant

**DEFENDANT'S MOTION TO DISMISS THE COMPLAINT FOR LACK OF SUBJECT
MATTER JURISDICTION AND FOR FAILURE TO STATE A CLAIM UPON WHICH
RELIEF CAN BE GRANTED**

Defendant Advance America, Cash Advance Centers of Missouri, Inc. ("Advance America"), by and through its undersigned counsel of record, hereby moves to dismiss the Complaint for lack of subject matter jurisdiction, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, and for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6).

Specifically, the Court does not have subject matter jurisdiction to adjudicate Plaintiffs' request for a declaratory judgment that the Arbitration Provision contained in the Customer Loan Agreements is unconscionable and void as against Missouri public policy, pursuant to the Missouri Declaratory Judgment Act, Mo. Rev. Stat. § 527.010. Moreover, Plaintiffs' Complaint fails to establish as a matter of law that Advance America violated the Missouri Merchandising Practices Act, Mo. Rev. Stat. § 407.010 *et seq.*; misinterprets Mo. Rev. Stat. § 408.500.6 as requiring six principal reduction renewals; misconstrues new loans as renewals to support the claim that Advance America has violated Mo. Rev. Stat. § 408.500.6; does not establish that

Advance America has violated the so-called (but wholly fictitious) "Missouri interest rate cap;" and fails to make out a *prima facie* case to demonstrate that Advance America did not consider Plaintiffs' ability to repay their loans.

In support hereof, Advance America has filed the accompanying Suggestions.

Dated April 30, 2008

Respectfully submitted,

BERKOWITZ OLIVER WILLIAMS
SHAW & EISENBRANDT

By: s/ Kurt D. Williams

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**Attorneys for Defendant Advance America,
Cash Advance Centers of Missouri, Inc.**

CERTIFICATE OF SERVICE

I hereby certify that on April 30, 2008, a true and correct copy of the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system.

s/ Kurt D. Williams

Attorney for Defendant Advance America,
Cash Advance Centers of Missouri, Inc.